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ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE PALM BEACH COUNTY CABLE ORDINANCE; PROVIDING FOR THE REPEAL AND REPLACEMENT OF CHAPTER 8 OF THE PALM BEACH COUNTY CODE IN ITS ENTIRETY; PROVIDING FOR APPLICABILITY, CREATION AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR REQUIREMENT OF FRANCHISE AGREEMENT OR LICENSE AGREEMENT; PROVIDING FOR APPLICATION AND REVIEW PROCESS FOR INITIAL GRANT, RENEWAL OR TRANSFER OF FRANCHISE AGREEMENT OR LICENSE AGREEMENT; PROVIDING FOR MODIFICATION OF FRANCHISE AGREEMENT OR LICENSE AGREEMENT; PROVIDING FOR FEES AND COSTS; PROVIDING FOR PERMIT, CONSTRUCTION SCHEDULE AND STANDARDS, AND MAINTENANCE; PROVIDING FOR RETENTION AND PRODUCTION OF BOOKS AND RECORDS; PROVIDING FOR AUDIT; PROVIDING FOR CUSTOMER SERVICE STANDARDS; PROVIDING FOR LEASED ACCESS CHANNELS; PROVIDING FOR CABLE CHANNELS FOR EDUCATION OR GOVERNMENT USE AND INSTITUTIONAL NETWORKS; PROVIDING FOR THE SALE OR TRANSFER OF A CABLE SYSTEM; PROVIDING FOR COUNTY'S RIGHT TO PURCHASE, CONSTRUCT, OPERATE, AND/OR MAINTAIN A CABLE SYSTEM; PROVIDING FOR INDEMNIFICATION, INSURANCE AND SECURITY; PROVIDING FOR RULES AND REGULATIONS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REVOCATION OR TERMINATION OF FRANCHISE AGREEMENT OR LICENSE AGREEMENT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, on September 30, 1986, the Board of County Commissioners of Palm Beach County, Florida, enacted Chapter 8 of the Palm Beach County Code ("The Code") by adopting Ordinance No. 86-35, known as the "Palm Beach County Cable Television Ordinance of 1986", in order to regulate the use of County rights-of-way and ensure the highest quality of cable services to the subscribing public; and

WHEREAS, on November 15, 1988, the Board of County Commissioners of Palm Beach County, Florida, amended Chapter 8 of The Code by enacting Ordinance No. 88-36 to provide for various technical requirements and administrative responsibilities necessitated by the increase in cable providers and subscribers within Palm Beach County; and

WHEREAS, on October 15, 1991, the Board of County Commissioners of Palm Beach County, Florida, again amended Chapter 8 of The Code by enacting Ordinance No. 91-42, to

1 respond to changes in the cable industry and to provide for the operation of Palm Beach County's
2 Education and Government Station, Channel 20; and

3 **WHEREAS**, on March 17, 1992, the Board of County Commissioners of Palm Beach
4 County, Florida, further amended Chapter 8 of The Code by enacting Ordinance No. 92-4 to
5 eliminate the one percent (1%) fee utilized for capital expenditures for County Channel 20, to
6 increase franchise fees to five percent (5%) of gross annual revenues, and to require remittance
7 of franchise fees to Palm Beach County on a semi-annual basis; and

8 **WHEREAS**, the Board of County Commissioners of Palm Beach County has determined
9 that, due to the passage of the Telecommunications Act of 1996 by the United States Congress,
10 the citizens of Palm Beach County will be better served by repealing Chapter 8 of the Code in its
11 entirety and replacing same with language which is consistent with the Telecommunications Act
12 of 1996 and which provides for more efficient administration of the construction, installation,
13 operation, and maintenance of cable systems within County rights-of-way.

14
15 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
16 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

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18 **SECTION 1: TITLE**

19 This Ordinance shall be known as the "Palm Beach County Cable Ordinance".

20 **SECTION 2: TABLE OF CONTENTS**

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SECTION 3: APPLICABILITY

(A) Unincorporated Area. This Ordinance shall apply to all unincorporated areas of Palm Beach County, Florida, hereinafter referred to as "County".

(B) Incorporated Area. To the extent that a municipality does not assume jurisdiction over the regulation of cable operators within the municipality, this Ordinance shall apply in its entirety. Further, where County right-of-way is located within an incorporated area and/or where County right-of-way is utilized by a cable operator to provide service within an incorporated area, the cable opertor shall be subject to provisions of this Ordinance as set forth by the Cable Service Coordinator in a policy and procedure applicable thereto.

(C) Annexed Area. To the extent that a municipality does not assume jurisdiction over the regulation of cable operators providing cable services in an area annexed into the municipality after the cable operator entered into a Franchise Agreement with the County, this Ordinance shall apply in its entirety. Further, where County right-of-way is located within an incorporated area and/or where County right-of-way is utilized by a cable operator to provide service within an incorporated area, the cable opertor shall be subject to provisions of this Ordinance as set forth by the Cable Service Coordinator in a policy and procedure applicable thereto.

(D) Interlocal Agreements. The County may enter into an Interlocal Agreement with a municipality or other governmental entity to establish franchising or licensing jurisdiction and authority, or to further any other cable related purpose permitted under federal or state law.

SECTION 4: CREATION AND PURPOSE

The Board of County Commissioners of Palm Beach County, Florida, is authorized to adopt this Ordinance pursuant to Chapter 125, Florida Statutes, to provide for the regulation of cable systems utilizing County rights-of-way and to encourage competition, growth and development of said cable systems for the benefit of persons residing within the franchising jurisdiction of Palm Beach County.

To further provide for the safety and welfare of the citizens of Palm Beach County, the
Cable System Coordinator may establish permits, policies and procedures necessary to
implement the provisions of this Ordinance. All cable operators shall abide by the provisions of
this Ordinance, as amended from time to time, and all permits, policies and procedures
applicable thereto.

SECTION 5: DEFINITIONS

As used in this Ordinance, the following words and phrases have the meaning ascribed herein, unless a different meaning is set forth in another section of this Ordinance or the context clearly indicates otherwise.

(A) ACT: the Federal Communications Act of 1934, as amended, which amendments specifically include the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, hereinafter collectively referred to as "the Act".

(B) ACTIVATED CHANNELS: those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel design intended for public, education, or government use.

(C) AFFILIATE: when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(D) **ANNUAL REPORT:** an annual audited financial report.

(E) **BASIC CABLE SERVICE:** any service tier which includes the retransmission of television broadcast signals.

(F) **CABLE CHANNEL or CHANNEL:** a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel designated by the Federal Communications Commission.

(G) **CABLE OPERATOR:** any person or group of persons:

- (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or
- (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(H) **CABLE SERVICE:**

- (1) the one-way transmission to subscribers of:
 - (a) video programming; or
 - (b) other programming service; and
- (2) subscriber interaction, if any, which is required for the selection or use of programming or other programming service.

(I) **CABLE SYSTEM:** a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and which is provided to multiple subscribers within a community, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves subscribers without using any County right-of-way;
- (3) a facility of a common carrier which is subject, in whole or in part, to the regulations of Title II of the Act, except that such facility shall be considered a cable system for purposes of Section 621(c) of the Act to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

- (4) an open video system that complies with Section 653 of the Act; or
- (5) a facility of any electric utility used solely for operating its electric utility systems.

(J) CABLE SYSTEM COORDINATOR: The Cable System Coordinator for Palm Beach County, or his/her designee.

(K) EDUCATION OR GOVERNMENT ACCESS FACILITIES:

- (1) Channel capacity designated for education or government use; and
- (2) facilities and equipment for the use of such channel capacity.

(L) FEDERAL COMMUNICATIONS COMMISSION: the federal agency which regulates interstate and foreign commerce in communication by wire and radio, hereinafter referred to as the "FCC".

(M) FACILITIES: wires, cables, conductors, ducts, conduits, vaults, manholes, trenches, amplifiers, appliances, attachments, poles and other property and equipment as are necessary and appurtenant to the operation of the cable system. In the context of education or government access, it shall include all of the above plus studios, cameras, antennae, dishes, buildings, chairs, desks, vehicles, and all other capital equipment associated with the provision of said programming and access.

(N) FRANCHISE AGREEMENT: a nonexclusive authorization or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction, installation, operation, and maintenance of a cable system in, under, above, along, through, across and upon County rights-of-way within the franchising jurisdiction of the County.

(O) FRANCHISE FEE: the charge based on the annual gross revenues of the cable operator levied pursuant to this Ordinance in accordance with federal law. It does not include:

- (1) any tax, fee or assessment of general applicability;
- (2) fees for capital costs associated with education or government access facilities and equipment; or
- (3) any other fees or charges imposed on a cable operator which are not based solely on the status of the cable operator.

(P) **FRANCHISING AUTHORITY**: any governmental entity empowered by federal, state, or local law to grant a franchise or license in accordance with this Ordinance.

(Q) GROSS REVENUES: all revenues derived directly or indirectly by the cable operator, from or in direct or indirect connection with the provision of cable services pursuant to this Ordinance. Gross revenues shall include but not be limited to monthly fees charged subscribers for any cable service, including but not limited to, basic, optional, premier, per-channel, or per program service; installation, disconnection, reconnection, or change of service fees; wiring fees; leased channel fees; revenues from programmers for carriage of programming on the cable system; revenues from rental or sales of converters or other equipment; local advertising revenues; revenues from program guides; revenues from home shopping channels ; and revenues from internet access and high speed data access. This provision shall be read broadly to prevent the avoidance of franchise fees by a cable operator through arrangements with affiliates. Gross revenues shall not include any taxes on services furnished by the cable operator which are imposed directly on any subscriber or user by the state, or other governmental unit and which are collected by the cable operator on behalf of said governmental unit.

(R) **INSTALLATION:** the connection of the cable system from the feeder cable to the subscriber's terminal.

(S) INSTITUTIONAL NETWORK: a communication network which is constructed, installed, or maintained by a cable operator and which is generally available only to subscribers who are not residential subscribers.

(T) INTERACTIVE ON-DEMAND SERVICE: a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

(U) **LICENSE AGREEMENT:** a nonexclusive authorization or renewal thereof issued by a franchising authority, whether such authority is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction, installation, and maintenance of a cable system in, under, above, along, through, across and upon the County rights-of-way within the jurisdiction of the County, but which does not authorize the

1 operation of a cable system within said jurisdiction. Execution of a License Agreement shall be
2 required in those instances where a cable operator desires to occupy a portion of the County
3 right-of-way for the sole purpose of providing cable service to persons or areas outside of the
4 County's jurisdiction.

5 (V) NATIONAL ELECTRICAL CODE: the most recent edition of the National
6 Electrical Code as adopted and amended by the Board of County Commissioners of Palm Beach
7 County.

8 (W) OTHER PROGRAMMING SERVICE: information that a cable operator makes
9 available to all subscribers generally.

10 (X) OUTAGE: the complete or partial loss of signal, whether audio or visual, or the
11 provision of signal quality substantially below the technical standards as set forth in this
12 Ordinance or in a rule, policy or procedure established by the Cable System Coordinator.

13 (Y) SECURITY: a letter of credit; a performance, payment, and/or construction bond;
14 or an escrow agreement securing the full and faithful performance of this Ordinance and any
15 Franchise or License Agreement entered into in accordance herewith.

16 (Z) RIGHT-OF-WAY: a way or place of whatever nature, publicly held and presently
17 opened or established to be opened for use by the public which includes streets, roads, highways
18 and alleys.

19 (AA) SATELLITE MASTER ANTENNA SYSTEM (SMATV): a facility which
20 includes a set of closed transmission paths and associated signal generation, reception and
21 control equipment which is not franchised and serves only subscribers in one (1) or more
22 multiple unit dwellings or residential areas under common ownership, control or management,
23 and which does not utilize the County rights-of-way in any manner.

24 (BB) SERVICE TIER: a category of cable service or other services provided by a cable
25 operator and for which a separate rate is charged by the cable operator.

26 (CC) STRAND MILE: a linear mile measured on the surface of the ground above or
27 below the cable strand as such would be or is installed.

28 (DD) SUBSCRIBER: a person lawfully receiving cable service(s) from a cable operator.

(EE) SUNSHINE STATE ONE CALL OF FLORIDA: the utility notification center serving as a liaison for excavators.

(FF) USABLE ACTIVATED CHANNELS: activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the FCC.

(GG) VIDEO PROGRAMMING: programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

SECTION 6: FRANCHISE AGREEMENT OR LICENSE AGREEMENT

REQUIRED

(A) General

(1) Upon approval by the Board of County Commissioners, the County shall enter into a Franchise Agreement or a License Agreement with a cable operator, the terms and conditions of which are given full force and effect, and are enforced as if specifically and completely set forth herein. There is no agreement for the construction, installation, operation, or maintenance of a cable system within County rights-of-ways until the applicable Franchise Agreement or License Agreement has been fully executed by both the County and the cable operator.

(2) The Franchise Agreement or License Agreement shall not exceed a term of ten (10) years.

(3) If required, the cable operator shall complete all conditions of approval within the reasonable times as specified within the Franchise Agreement or License Agreement. Failure to do so in a timely manner shall render said Franchise Agreement or License Agreement void and of no further force and effect.

(4) Neither a Franchise Agreement nor a License Agreement shall convey title, equitable or legal, in any County right-of-way. Said Franchise Agreement or License Agreement shall only provide the right for the cable operator to occupy designated and specific portions of County rights-of-way for the purpose and duration of time as set forth in said Agreement and this Ordinance.

(B) Franchise Agreement

Any person, firm, company, corporation or association desiring to construct, install, operate, and maintain a cable system within the jurisdiction of Palm Beach County, as defined in Section 3 hereinabove, shall, prior to such construction, installation, operation, and maintenance, apply for and enter into a Franchise Agreement with the County. Any such Franchise Agreement shall authorize the cable operator to construct, install, and maintain a cable system in, under, above, along, through, across and upon County rights-of-way, and to engage in the business of operating said cable system within the jurisdiction of the County. All Franchise Agreements shall be nonexclusive. To the extent provided by federal, state and local law, a cable operator shall be entitled to use easements dedicated for compatible uses. Consistent with applicable federal, state and local law, the Franchise Agreement is limited to the authorization of cable services only within the franchising jurisdiction of the County. Any request to provide non-cable telecommunication services within the County's jurisdiction shall be approved by the County consistent with applicable federal, state and local law prior to any person, firm, company, corporation or association providing such non-cable telecommunication services.

(C) License Agreement

Any person, firm, company, corporation or association desiring to construct, install, and maintain a cable system within the jurisdiction of Palm Beach County, as defined in Section 3 hereinabove, shall, prior to such construction, installation, and maintenance, apply for and enter into a License Agreement with the County. Any such License Agreement shall authorize the cable operator to construct, install and maintain a cable system in, under, above, along, through, across and upon the County rights-of-way. All License Agreements shall be nonexclusive. To the extent provided by federal and state law, a cable operator shall be entitled to use easements dedicated for compatible uses. The execution of a License Agreement shall be required in those instances where a cable operator desires to occupy a portion of the County's right-of-way for the sole purpose of providing cable service to persons or areas outside of the County's jurisdiction. Should a cable operator desire to provide cable services within the franchising jurisdiction of the County, the franchise provisions of this Ordinance would be

1 applicable to said cable operator, and the cable operator shall enter into a Franchise Agreement
2 with the County prior to providing such cable services.

3 (D) It shall be a violation of this Ordinance to commence or engage in the
4 construction, installation, operation, or maintenance of a cable system within the jurisdiction of
5 the County without a Franchise Agreement or License Agreement.

6 (E) If a cable operator or affiliate thereof is engaged in the provision of
7 telecommunications services, Section 621(b)(3) of the Act, as amended, shall apply in its entirety.

8 (F) Consistent with federal law, the County may not require a cable operator to provide
9 any telecommunications services or facilities, other than institutional networks or education or
10 government channel capacities, as a condition of the initial grant or renewal of a Franchise
11 Agreement or Licence Agreement.

12 **SECTION 7: APPLICATION PROCESS FOR INITIAL GRANT, RENEWAL, OR**
13 **TRANSFER OF FRANCHISE AGREEMENT; INFORMATION**
14 **REQUIRED**

15 Upon request, the Cable System Coordinator shall provide a cable operator with an
16 Application for an Initial Grant, Renewal, or Transfer of a Franchise Agreement. The cable
17 operator shall fully complete said Application and submit same to the Cable System Coordinator for
18 review in accordance with the provisions of this Ordinance. Said Application shall include
19 information pertaining to the following areas:

20 (A) Identification of Applicant
21 (B) Legal Information
22 (C) Financial information and pro forma financial statements
23 (D) Technical qualifications
24 (E) System design, layout and equipment
25 (F) Levels of services

1 **SECTION 8: APPLICATION PROCESS FOR INITIAL GRANT, RENEWAL,**
2 **OR TRANSFER OF LICENSE AGREEMENT; INFORMATION**
3 **REQUIRED**

4 Upon request, the Cable System Coordinator shall provide a cable operator with an
5 Application for an Initial Grant, Renewal, or Transfer of a License Agreement. The cable operator
6 shall fully complete said Application and submit same to the Cable System Coordinator for review
7 in accordance with the provisions of this Ordinance. Said Application shall include information
8 pertaining to the following areas:

9 (A) Identification of Applicant
10 (B) Legal information
11 (C) Financial information and pro forma financial statements
12 (D) Technical qualifications
13 (E) System design, layout and equipment

14 **SECTION 9: REVIEW OF APPLICATION FOR INITIAL GRANT OF**
15 **FRANCHISE AGREEMENT OR LICENSE AGREEMENT**

16 (A) Upon receipt of an application for an initial grant of a Franchise Agreement or
17 License Agreement, the Cable System Coordinator shall review same and within 120 days, notify
18 the applicant of any facial deficiencies or request any additional information necessary to adequately
19 review the information within the application. Nothing in this section shall waive the review process
20 and time frames set forth under federal law.

21 (B) Upon determination by the Cable System Coordinator that any facial deficiencies
22 have been addressed and that the application is otherwise complete, the Cable System Coordinator
23 shall proceed with a review of the application for the purpose of preparing a recommendation for the
24 Board of County Commissioners. Upon completion of this review, the Cable System Coordinator
25 shall notify the Clerk of the Board of County Commissioners to advertise for public hearing said
26 consideration. The advertisement shall be published in a newspaper of general circulation in the
27 County once weekly for two (2) consecutive weeks not more than twenty-one (21) days nor less than
28 one (1) week, prior to the public hearing. The Cable System Coordinator shall recommend to the
29 Board of County Commissioners the approval, denial, or conditional approval of the application.

1 Nothing in this Section shall be construed as a waiver of the time frame for review and approval
2 granted to a franchising authority under applicable federal, state, or local law.

3 (C) Evaluation of Application by the Board of County Commissioners

4 (1) The Board of County Commissioners shall consider the information and
5 criteria as set forth in this Section and any other information it deems appropriate in evaluating the
6 application as submitted by the applicant. Said evaluation and subsequent action of the Board of
7 County Commissioners is strictly a legislative function. In evaluating an application the following
8 shall be considered:

9 (a) the capacity of the County rights-of-way to accommodate the
10 applicant's proposed facilities;

11 (b) the capacity of the County rights-of-way to accommodate additional
12 uses of same if the application is granted;

13 (c) the damage or disruption, if any, to County or private facilities,
14 improvements, service, travel, or landscaping if the application is granted;

15 (d) the public interest in minimizing the cost and disruption of
16 construction within County rights-of-ways;

17 (e) the effect, if any, on public health, safety, and welfare if the application
18 is granted;

19 (f) the financial viability of the applicant; and

20 (g) any such other factors as may demonstrate that the applicant's request
21 for use of the County rights-of-way will serve the community interest.

22 (2) The Board of County Commissioners may approve, deny, or approve with
23 conditions an application for initial grant of a Franchise Agreement or a License Agreement. The
24 Board of County Commissioners shall not unreasonably withhold approval of any application.

25 **SECTION 10 : REVIEW OF APPLICATION FOR RENEWAL OF**

26 **FRANCHISE AGREEMENT OR LICENSE AGREEMENT**

27 (A) Franchise Agreement

28 (1) To the extent required by federal law, requests for renewal of a Franchise
29 Agreement shall be governed by the Act, as amended. The Cable System Coordinator may establish

1 policies and procedures pertaining to the renewal process and proceedings, and in addition, may
2 provide a process for an informal renewal of a Franchise Agreement along with policies and
3 procedures applicable thereto. The review of the application for renewal of a Franchise Agreement
4 shall be in accordance with Section 9 (B) and (C) as set forth hereinabove to the extent consistent
5 with federal law.

6 (2) To the extent permitted by law, the Board of County Commissioners may
7 grant, deny, or grant with conditions, the renewal of a Franchise Agreement in whole or in part.

8 (3) The renewal of a Franchise Agreement shall not exceed a term of ten (10)
9 years.

10 (4) Any renewal of a Franchise Agreement shall be subject to applicable federal,
11 state, and local laws, rules, and regulations.

12 (B) License Agreement

13 (1) A cable operator desiring to renew a License Agreement shall, not more than
14 180 days nor less than 90 days before expiration of the current license, submit an application for
15 renewal to the Cable System Coordinator.

16 (2) Upon determination by the Cable System Coordinator that any facial
17 deficiencies have been addressed and that the application is otherwise complete, the Cable System
18 Coordinator shall proceed with a review of the application for the purpose of preparing a
19 recommendation for the Board of County Commissioners. Upon completion of this review, the
20 Cable System Coordinator shall notify the Clerk of the Board of County Commissioners to advertise
21 for public hearing said consideration. The advertisement shall be published in a newspaper of
22 general circulation in the County once weekly for two (2) consecutive weeks not more than twenty-
23 one (21) days nor less than one (1) week, prior to the public hearing. The Cable System Coordinator
24 shall recommend to the Board of County Commissioners the approval, denial, or conditional
25 approval of the application. Nothing in this Section shall be construed as a waiver of the time frame
26 for review and approval granted to a franchising authority under applicable federal, state, or local
27 law.

28 (3) Evaluation of Application by the Board of County Commissioners

29 The Board of County Commissioners shall consider the information and criteria as

1 set forth in this Section and any other information it deems appropriate in evaluating the application
2 as submitted by the applicant. Said evaluation and subsequent action of the Board of County
3 Commissioners is strictly a legislative function. In evaluating an application the following shall be
4 considered:

- 5 (a) the capacity of the County rights-of-way to accommodate the
6 applicant's proposed facilities;
- 7 (b) the capacity of the County rights-of-way to accommodate additional
8 uses of same if the application is granted;
- 9 (c) the damage or disruption, if any, to County or private facilities,
10 improvements, service, travel, or landscaping if the application is granted;
- 11 (d) the public interest in minimizing the cost and disruption of
12 construction within County rights-of-ways;
- 13 (e) the effect, if any, on public health, safety, and welfare if the application
14 is granted;
- 15 (f) the financial viability of the applicant; and
- 16 (g) any such other factors as may demonstrate that the applicant's request
17 for use of the County rights-of-way will serve the community interest.

- 18 (4) The renewal of the License Agreement shall not exceed a term of ten (10)
19 years.
- 20 (5) Any renewal of a License Agreement shall be subject to applicable federal,
21 state, and local laws, rules, and regulations.

22 **SECTION 11: MODIFICATION OF FRANCHISE AGREEMENT OR LICENSE**
23 **AGREEMENT OBLIGATIONS**

24 A cable operator may request that the County modify the requirements of an existing
25 Franchise Agreement or License Agreement. Any final decision with respect to said request shall
26 be made by the Board of County Commissioners at a public hearing within 120 days after receipt of
27 such request, unless such period is extended by mutual agreement of the cable operator and the Cable
28 System Coordinator.

1 **SECTION 12: FEES AND COSTS**

2 In accordance with federal law, the fees and costs as set forth herein are separate from,
3 and in addition to, any and all federal, state, and local taxes, fees, charges, or assessments as may
4 be levied, imposed or due from the applicant or cable operator. Said fees and costs are necessary
5 in order to obtain reasonable compensation for use of County rights-of-way and for the
6 administration and enforcement of this Ordinance and its corresponding rules, policies, and
7 procedures. No acceptance of any payment of fees or costs shall be construed as an accord that
8 the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be
9 construed as a release of any claim the County may have for further or additional sums.

10 (A) Application Fee

11 (1) An application for the initial grant, renewal, or transfer of a Franchise
12 Agreement or License Agreement shall be submitted to the Cable System Coordinator along with
13 a non-refundable Application Fee of Ten Thousand Dollars (\$10,000.00).

14 (2) An application for the modification of an obligation of a Franchise
15 Agreement or License Agreement shall be submitted to the Cable System Coordinator along with
16 a non-refundable Application Fee of Five Thousand Dollars (\$5,000.00).

17 (3) The non-refundable Application Fee provides for the recovery of direct
18 and indirect costs and expenses incurred by the County in processing the application. In
19 addition, the County may request the applicant to pay additional sums should the Application Fee
20 not cover consultants, experts, accountants, attorneys or other persons utilized by the Cable
21 System Coordinator to assist in the evaluation of said application. The applicant shall pay any
22 additional costs to the County prior to final consideration of said application by the Board of
23 County Commissioners.

24 (B) Franchise Fee

25 (1) As consideration for the County granting the cable operator the use of
26 County rights-of-way for construction, installation, operation, and maintenance of a cable system,
27 the cable operator shall pay to the County a franchise fee of five percent (5%) of its annual gross
28 revenues for each year of the term of the Franchise Agreement and any renewal thereof. Said
29 franchise fee shall be in addition to all other taxes, fees, and assessments which are required to be

1 paid to the County, and which do not constitute a franchise fee under Section 622 of the Act, as
2 amended.

3 (2) The franchise fee is due and payable to the County on a quarterly basis
4 during the term of the Franchise Agreement and any renewal thereof. Payment shall be due no
5 later than fifteen (15) days after the end of each month for which the fee is owed. If the monthly
6 franchise fee is not paid when due, there shall be a late penalty assessed at the rate of one percent
7 (1%) per month, upon the unpaid franchise fee outstanding at the end of each month.

8 (3) The franchise fee shall be subject to modification in accordance with
9 federal law.

10 (C) License Fee

11 (1) The Board of County Commissioners shall, by resolution, establish a
12 License Fee payable by the cable operator to the County as consideration for granting the use of
13 County rights-of-way for construction, installation, and maintenance of a cable system. Said
14 license fee shall be in addition to all other taxes, fees, and assessments which may be required to
15 be paid to the County.

16 (2) The license fee is due and payable to the County on a monthly basis
17 during the term of the License Agreement and any renewal thereof. Payment shall be due no
18 later than fifteen (15) days after the end of each month for which the fee is owed. If the monthly
19 license fee is not paid when due, there shall be a late penalty assessed at the rate of one percent
20 (1%) per month upon the unpaid license fee outstanding at the end of each month.

21 (D) Pole Attachment Fee

22 The cable operator shall pay a pole attachment fee to the County for use of County
23 owned poles and shall pay the cost of all make ready charges associated with the utilization of
24 said pole. Said pole attachment fee and cost of all make ready charges shall be in accordance
25 with applicable federal or state law.

26 **SECTION 13: PERMIT REQUIRED**

27 (A) A cable operator shall not construct, install, or maintain a cable system in whole
28 or in part, without a permit issued by the Cable System Coordinator and/or any other applicable
29 governmental agency or County department. Only contractors certified in accordance with Palm

1 Beach County Ordinance 90-23, as amended, may be utilized for the construction, installation,
2 and maintenance of a cable system. The cable operator shall comply with all applicable County
3 rules, policies and procedures, including but not limited to, land use regulations, construction
4 standards, and permit procedures.

5 (B) The cable operator shall commence construction and installation of the cable
6 system within a period not to exceed ninety (90) days of issuance of the permit, and shall
7 diligently pursue completion of same. Road cuts, if permitted, shall be performed, closed, and
8 restored in accordance with the policies and procedures of the Cable System Coordinator or
9 designee County Department. The cable operator shall, at its sole cost and expense, and in a
10 manner approved by the County, promptly restore and repair any damage or disturbance caused
11 to a County right-of-way as a result of the cable operator's construction or installation of the
12 cable system.

13 (C) The construction, installation, and maintenance of a cable system by a cable
14 operator within County rights-of-way shall be in accordance with the then current National
15 Electrical Code. Each pedestal and amplifier installed by the cable operator shall be labeled with
16 the name and telephone number of same. The cable operator shall notify the Cable System
17 Coordinator when an installation is proposed in any structure, other than a single family
18 dwelling. The County reserves the right to inspect the property to ensure that the installation will
19 not compromise fire safety measures required in the Life Safety Code, the Building Code, or the
20 Fire Prevention Code. No construction, installation, and maintenance permits shall be required
21 for service drops that do not cross County rights-of-way.

22 (D) The cable operator shall ensure that all construction and installation performed in
23 County rights-of-way be performed in accordance with the Florida Department of Transportation
24 Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets
25 and Highways. The cable operator shall utilize the services of Sunshine State One Call of
26 Florida prior to receiving a permit for construction, installation, and maintenance of a cable
27 system within a County right-of-way. Any substantial deviation from the construction,
28 installation, or maintenance plans and/or specifications of the permit shall require the prior

1 approval of the Cable System Coordinator and shall require further utilization of the services of
2 Sunshine State One Call of Florida.

3 (E) Upon completion of the construction, installation, and maintenance of the cable
4 system, the cable operator shall coordinate inspection of the cable system with the Cable System
5 Coordinator to ensure conformity with the plans and specifications of the permit. The cable
6 operator shall contact the Cable System Coordinator at least twenty-four (24) hours in advance of
7 a requested inspection. The cable operator shall cover and barricade all open ditches overnight,
8 and open such up for inspection as required by the Cable System Coordinator. Any construction
9 or installation under a paved surface shall be left open at the edge of pavement, provided the
10 cable operator ensures that same will be backfilled overnight. The cable operator shall abide by
11 the provisions of the then current Manual on Traffic Control and Safe Practices promulgated by
12 the Florida Department of Transportation.

13 (F) The cable operator shall only strand poles in areas where all facilities and
14 equipment necessary to make service immediately available to subscribers will be in place and
15 energized within four (4) months from the date the stranding of said poles is initiated. When
16 rebuilding the cable system, the cable operator, upon reasonable request by the Cable System
17 Coordinator, shall remove said cable operator's old facilities and equipment from the County
18 rights-of-way within a period of time not to exceed a total of ninety (90) days of activation of the
19 new facilities and equipment.

20 (G) The Cable System Coordinator shall have the authority to adopt rules, policies and
21 procedures relating to the construction, installation, and maintenance of the cable system within
22 the County rights-of-way. Notwithstanding the rules, policies, and procedures as established by
23 the Cable System Coordinator, the cable operator shall abide by all applicable County rules,
24 policies and procedures as they relate to the use of County rights-of-way.

25 **SECTION 14: CONSTRUCTION SCHEDULE AND STANDARDS;**

26 **MAINTENANCE**

27 (A) When constructing a cable system in, under, above, along, through, across, and
28 upon County rights-of-way or through easements which are within the area to be served by the
29 cable system and which have been dedicated for compatible uses, the cable operator shall ensure:

(1) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

(2) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(3) that the County as owner of the rights-of-way, and the owner of any easement utilized by the cable operator, be compensated for any damage caused by the installation, construction, operation, maintenance, or removal of such cable system by the operator.

(B) The cable operator shall provide the Cable System Coordinator with a construction progress report on a quarterly basis. The Cable System Coordinator shall establish policies and procedures pertaining to a format for the progress report, and the construction schedules and standards.

(C) The cable operator shall, within a reasonable time, design and construct the cable system to make cable service available to all properties owned and occupied by public agencies (i.e., government buildings and schools) within the franchise area and within 150 feet of the nearest point of the cable operator's cable system.

(D) In those areas and portions of the franchise or license area where the transmission or distribution facilities of both the telephone and electric utilities are underground or hereafter may be placed underground, the cable operator shall likewise construct, install, and maintain all of its cable system facilities underground. As transmission and distribution lines of the telephone and electrical utilities are converted from overhead to underground installations within the franchise or license area, the cable operator shall, within a reasonable time, similarly convert the cable system at the cable operator's sole cost and expense.

(E) Relocation at Request of County

(1) No provision of this Ordinance shall be construed to prevent or otherwise limit the County from constructing, installing, maintaining, or relocating water or sewer lines, streets, or other public improvements even though it may interfere or conflict with the cable system of the cable operator. Where relocation of a cable system, in whole or in part, is deemed necessary to

1 accommodate the County's construction, installation, maintenance, or relocation of water or sewer
2 lines, streets, or other public improvements, the decision of the County as to such relocation shall
3 be binding.

4 (2) Upon reasonable notice and at its sole cost and expense, the cable operator
5 shall protect, support, disconnect, remove, or relocate its cable system, in whole or in part, either
6 temporarily or permanently, as requested by the Cable System Coordinator. No such notice may
7 be sent where the cable operator has not provided the requested detailed map to the Cable System
8 Coordinator or received a permit for the particular construction or installation.

9 (3) The cable operator shall, at its sole cost and expense, and in a manner
10 approved by the County, restore or repair any damage or disturbance caused to County rights-of-way
11 as a result of the relocation of a cable system.

12 (4) Any portion of a cable system placed upon, over or under County rights-of-
13 way that is deemed by the County to be interfering in any way with public convenience or safety, or
14 with the maintenance or continuous use of said rights-of-way, or which inhibits or interferes with
15 improvements thereto, shall immediately upon written notice from the Cable System Coordinator
16 be removed or relocated by the cable operator at the cable operator's sole cost and expense.

17 (F) In the case of force majeure and in instances where the County determines it
18 necessary to remove or relocate a cable system, in whole or in part, due to an emergency danger to
19 persons or property, no charge shall be made by the cable operator against the County, its officials,
20 employees or agents, for any costs or expenses incurred by the cable operator for the restoration
21 and/or repair of the removed or relocated cable.

22 (G) Upon failure of the cable operator to commence, or to diligently pursue to completion,
23 any construction or installation of a cable system within the time prescribed and to the satisfaction
24 of the Cable System Coordinator, the County may cause such construction or installation to be
25 performed. Such construction and installation as performed by the County shall be paid in full by
26 the cable operator within ten (10) days after receipt of an invoice from the County.

27 (H) Within forty-eight (48) hours after notice from the County, a cable operator shall
28 remove any graffiti on any part of its cable system facilities. If the cable operator fails to do so, the
29 County may remove the graffiti and invoice the cable operator for the cost of said removal. Said

1 costs shall be remitted to the County within ten (10) days after receipt of an invoice from the County.

2 (I) Except as is deemed necessary for the construction, installation, or maintenance of
3 the cable system, the cable operator shall not remove any tree or trim any portion, either above, at,
4 or below ground level, within any County right-of-way unless the terms of the permit provide oth-
5 erwise. The cable operator shall be responsible for any and all damages to any tree and its
6 surrounding area as a result of trimming, removing or relocating same.

7 (J) Emergency Override

8 The cable operator shall either provide compensation to the County to purchase and
9 install equipment, or provide and install the necessary equipment to automatically interrupt
10 programming on all channels of the subscriber network by means of an audio and visual message
11 to present emergency information by public and law enforcement officials of the County. Such
12 equipment shall be accessible, at a minimum, from the Governmental Center and the County's
13 Emergency Operations Center (EOC), and the County shall incur no cost, fee or charge for said
14 equipment, installation, operation, or maintenance thereof.

15 **SECTION 15: BOOKS AND RECORDS; AUDIT**

16 (A) Books and Records

17 (1) The cable operator shall maintain correct and complete books and records
18 (specifically including maps and customer service information), with adequate accounting and ad-
19 ministrative controls, in accordance with generally accepted accounting principles (GAAP) as
20 promulgated by the American Institute of Certified Public Accountants and in accordance with
21 federal and state laws, rules, and regulations. Said books and records shall be maintained for a
22 period of three (3) years, except in the case of litigation where said books and records must be
23 maintained throughout the pending litigation. The cable operator, in maintaining detailed maps and
24 improvement plans, shall designate the location, size, and general description of all cable system
25 facilities installed in County rights-of-way; any power supply sources (including voltages and
26 connections); and any other information in such detail or in a medium as may be directed by the
27 Cable System Coordinator. The cable operator shall base such maps upon post-construction
28 inspection in order for the County to verify the location of the cable system facilities.

(2) In order to monitor compliance with this Ordinance, the cable operator shall, upon reasonable notice, provide the County with books and records related in whole or in part to the construction, installation, operation, or maintenance of the cable system and the revenues derived therefrom, so that the County may inspect and copy same. If any books and records are too voluminous, or for security reasons cannot be copied and moved, the cable operator may request that the inspection take place at a mutually agreed upon location, provided that the cable operator make necessary arrangements for the copying of documents selected by the County and pay all travel and per diem expenses incurred by the County in inspecting said books or records.

(B) Audit

(1) Annually, within sixty (60) days following the end of the County's fiscal year, each cable operator shall submit a statement, audited and certified by either the chief financial officer of said cable operator or a certified public accountant, and prepared in accordance with GAAP, setting forth the total amount and sources of gross revenue and all payments, deductions and computations so as to detail the revenues included in the calculation of the gross revenue. The format of the audit statement may be established by the Cable System Coordinator in accordance with industry standards.

(2) All amounts paid by the cable operator to the County shall be subject to audit and recomputation by the County. In the instance where an audit or recomputation performed by the County results in additional revenues equal to or in excess of three percent (3%) of total quarterly revenues to be paid by the cable operator, said cable operator shall pay to the County the cost of the audit or recomputation, along with said additional revenues. The additional revenues shall be subject to a late penalty assessed at the rate of one percent (1%) per month, upon the unpaid revenues due to the County.

SECTION 16: CUSTOMER SERVICE STANDARDS

(A) General

(1) The cable operator shall initiate prompt corrective action to satisfy unresolved complaints. If a customer is not satisfied with the resolution of a complaint, that customer shall be automatically referred to management level personnel. Local management shall work with the person to resolve the problem within forty-eight (48) hours. In the event that local management does

1 not satisfy the customer complaint, the complaint shall be referred to the managing officer of the
2 cable operator.

3 (2) All customer service representatives and service technicians of the cable
4 operator, including employees and independent contractors, shall identify themselves by name and
5 shall display an identification badge when performing work in the field.

6 (3) Any vehicle used for the installation, construction or maintenance of the cable
7 system shall bear the identification of the contractor and the cable operator in a conspicuous place
8 and manner.

9 (4) The cable operator, upon request, shall provide the customer with a copy of
10 the service report and a phone number to call to resolve any additional problems.

11 (5) The cable operator shall make available the equipment or devices necessary
12 for the receipt of all cable services for which the subscriber chooses to subscribe. In accordance with
13 federal law, The lowest tier of basic service which includes all off-air and education and government
14 channels shall be available without a converter.

15 (6) Upon request from a subscriber, the cable operator shall make available a
16 parental control mechanism or devise that permits the subscriber to lock out audible and visual
17 reception of certain programming.

18 (7) No access to cable services shall be denied to any group of potential residential
19 cable subscribers because of the income of the residents of the local area in which such group
20 resides.

21 (8) Nothing herein shall preclude the cable operator from entering into bulk rate
22 contracts for cable services, from engaging in promotional activities, or providing employee
23 discounts.

24 (B) Telephone Response

25 (1) The cable operator shall maintain a local, toll-free, or collect call telephone
26 access line which shall be available to its subscribers twenty-four (24) hours per day, seven (7) days
27 per week where trained representatives of the cable operator will be available to respond to customer
28 telephone inquiries.

(2) Telephone answer time by a customer service representative of the cable operator, including wait time, shall not exceed thirty (30) seconds when the connection is made. In any event, the caller shall be provided with the option and instructions to directly speak with a representative of the cable operator. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. Under normal operating conditions, the customer shall receive a busy signal less than three percent (3%) of the time.

(3) The abandonment rate for calls shall be no more than three percent (3%) of the calls reported incoming during any monthly reporting period.

(4) The above standards shall be met by the cable operator ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. The County shall consider unique or one time occurrences in the evaluation of the average standards in any one monthly reporting period.

(C) Outage Response

(1) The cable operator shall maintain, and upon request of the Cable System Coordinator, submit a monthly report accurately showing the time, duration, probable cause, number of homes affected, and action taken on all failures or outages of the cable system.

(2) The cable operator shall commence correcting any outage affecting three (3) or more customers in the same localized area, off the same line or feeder, within twenty-four (24) hours

(3) In the event of extensive system failure of any trunk or feeder cable causing a service outage to ten (10) or more customers in any geographic area, or the failure of modulator equipment, satellite reception equipment, or other system functions that result in the interruption of service throughout the franchise area, the cable operator shall take corrective action to promptly remedy the cable system failure.

(4) Total outages, with the exception of those caused by the cutting of properly buried and marked cables or the accidental downing of an aerial cable throughout the County shall not exceed ten (10) hours in any one (1) month.

(5) The cable operator shall promptly notify the Cable System Coordinator of all major outages, location of the outages, and the homes affected in order to respond to phone calls from subscribers regarding said outages. Said notification shall be performed via fax or telephone.

(D) Service Call Response

(1) All requests for standard installation, change of service, or disconnection shall be completed within seven (7) days.

(2) The cable operator shall commence the correction of all customer service calls regarding repairs and or service problems which are not outage related within twenty-four (24) hours unless the cable operator can sufficiently document why said repairs will take longer as in the case of equipment or cable replacement. At no time should repairs take longer than one (1) week to complete.

(3) An appointment for any service call which requires the subscriber to be at the premises shall be either conducted at a specific time, or at a maximum, a four (4) hour block during normal business hours, including weekends.

(4) The cable operator shall not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

(5) If the cable operator's representative is running late for an appointment with a subscriber, said representative shall so inform the subscriber at the earliest possible moment and, upon request of the subscriber, reschedule said appointment.

(E) Billing

(1) All charges to subscribers shall be consistent throughout the franchise area with a written schedule of fees for all services offered available to subscribers upon request. The cable operator shall apprise each new subscriber of all applicable fees and charges for providing any cable services, in writing.

(2) The cable operator shall not, with regard to fees, discriminate or grant any preference or advantage to any person; provided, however, that the cable operator may establish different rates for different classes of subscribers or users, provided that the cable operator does not discriminate between any subscribers or users within the same class.

(3) A cable operator shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, ancestry, sex, age, marital status, sexual orientation or disability.

(4) Subscribers shall receive a monthly statement from the cable operator not less than twenty (20) days prior to the payment due date.

(5) Bills sent by the cable operator to the subscriber for cable services are to be clear, concise and understandable. Said bills must be fully itemized, and clearly delineate all activity during the billing period, including dates of service being billed, optional charges, rebates, and credits.

(6) A phone number for bill adjustment shall be clearly printed on the statement along with instructions for the subscriber to call with any billing problems. Adjustments shall be made for any verifiable loss of service and shall appear on the subsequent subscriber billing.

(7) Subscriber requested disconnections shall be made as soon as practicable and in no case shall billing continue longer than five (5) calendar days following said request. The cable operator shall not enter into any agreement with a subscriber which imposes any charge other than past due balances and unreturned equipment charges following disconnection of service, except for reconnection, applicable deposits, subsequent monthly or periodic charges, and other charges lawfully imposed. Said charges shall be no greater than charges for new subscribers of the same class. The cable operator may refuse service to any subscriber due to nonpayment of outstanding fees or charges.

(8) The cable operator shall promptly issue any credit or refund due to the subscriber no later than the next billing cycle.

(9) The cable operator may hold promotions or otherwise accept payments for up to one year in advance, provided however, that the service for which payment has been accepted is not subject to an increase in cost until such payment has been expended.

(F) The County reserves the right to regulate rates as permitted by federal and state law.

(G) The cable operator shall, at the time of cable service initiation or reconnection, and at least annually thereafter, provide the customer with the following written information:

(1) Instructions for using all equipment, including instructions for use in conjunction with customer owned equipment.

(2) The availability of A/B switches.

(3) The procedures and charges to change cable service.

(4) What to do in case of a problem; trouble shooting; and where to call for cable service.

(5) A channel chart and price list.

(6) The billing policy.

(7) The requirement that customer service representatives and service technicians are to identify themselves by name.

(8) The right of customers to speak to management level personnel.

(9) The appropriate regulatory authority with whom to register a complaint and a listed phone number.

(H) The Cable System Coordinator shall be placed on the mailing list for all local and national promotions of the cable operator. All promotions must clearly state the cost of the service to the subscriber; restrictions of the promotion; and the date the promotion expires.

(I) Performance Evaluation

The Cable System Coordinator shall, on a periodic basis, evaluate the performance of the cable operator. Said evaluation may include, but not be limited to, a financial or technical audit. The cable operator shall fully cooperate with the Cable System Coordinator during all evaluations. If at any time the Cable System Coordinator determines that reasonable evidence exists of inadequate performance, it may require the cable operator to perform tests unless prohibited by federal law. The cable operator shall prepare results and a report to the Cable System Coordinator within thirty (30) days after notice. If the Cable System Coordinator reasonably determines that a survey of cable subscribers in connection with said performance evaluation is necessary, the County may require the cable operator to distribute said questionnaire to its subscribers at the sole cost and expense of the cable operator.

(J) Upon forty-five (45) days written notice by the County or within the cable operator's

next possible monthly subscriber billing, whichever occurs first, the franchisee shall insert

1 information produced and provided by the County within said subscriber billings. In order to cause
2 no additional charge to be borne by the franchisee in complying herewith, the size and weight of
3 paper stock for said inserts shall be in accordance with specifications set forth by the franchisee. The
4 franchisee is required to insert said material within its monthly billings no more than two (2) times
5 a year per customer.

6 **SECTION 17: LEASED ACCESS CHANNELS**

7 A cable operator, upon execution of a Franchise Agreement by the County, must provide
8 commercial or leased access channels to the extent required by federal or state law.

9 **SECTION 18: CABLE CHANNELS FOR EDUCATION OR GOVERNMENT USE:**

10 **INSTITUTIONAL NETWORKS; INTERCONNECTION**

11 (A) The franchisee shall designate its channel 20 for the County's education and
12 government channel, hereinafter referred to as "Channel 20", and make same available to all
13 subscribers, unless otherwise specifically provided by the County. Upon County's utilization of
14 eighty percent (80%) of the available air time between 8:00 a.m. and 10:00 p.m. on Channel 20 ,
15 the franchisee shall, upon written notice from the Cable System Coordinator, make available an
16 additional channel for education and government use by the County. Said eighty percent (80%) of
17 available air time shall be determined for a six (6) month period and shall include unduplicated daily
18 programming, and no more than twenty-five percent (25%) of character generated text. The
19 franchisee shall make available to the County a third channel for education and government use
20 provided that the cable system channel capacity of the cable opertor is eighty (80) or more video
21 channels. Each franchisee shall cooperate with the Cable System Coordinator, the Station Manager
22 of Channel 20, and the Director of Public Affairs to make available channel capacity for government
23 and education programming. The Station Manager for Channel 20 shall establish policies and
24 procedures for the implementation and operation of Channel 20, and shall develop criteria for use
25 by the franchisee of Channel 20 when not needed for education or government programming. Upon
26 thirty (30) days written notice by the County, the franchisee shall provide a minimum of fifty (50)
27 public service announcements per year within reasonable dates and times as requested by the County.

(B) The County shall, by resolution, appoint an Education and Government Programming Advisory Board which shall review the various means available in providing education and government programming, and shall inform the Board of County Commissioners on such matters.

(C) Within the extent permitted by law, the franchisee shall either construct, install, operate, and maintain, or provide compensation to the County to construct, install, operate, and maintain an institutional network designated for education and government use which links properties owned and occupied by public agencies, i.e. government buildings and schools throughout the franchise area as set forth in the applicable Franchise Agreement. The Cable System Coordinator may establish rules, policies, and procedures pertaining to an institutional network.

(D) The Board of County Commissioners reserves the right to require the establishment of an interconnected institutional network provided that the County shall not require the installation of a cable separate from the cable presently utilized to provide cable services. The cable operator, upon the request of the County, shall set aside one (1) channel for an institutional network.

SECTION 19: SALE OR TRANSFER OF CABLE SYSTEM

(A) A cable operator shall not sell or transfer ownership of its cable system without the prior consent of the County. Said consent by the County shall not be unreasonably withheld. The County shall have, in accordance with Section 617 of the Act, as amended, 120 days to act upon a completed request for said consent that includes all information as required pursuant to FCC regulations and as requested by the County. The cable operator and the County may agree to an extension of time for consideration of said request by the County. The County's grant of consent to a sale or transfer in one instance shall not render unnecessary further consent of any subsequent sale or transfer.

(B) Except as otherwise provided by the County, the sale or transfer of a cable system to an existing cable operator or cable operator whose franchise or license area overlaps in whole or in part with the franchise area of the transferor, the earlier expiring Franchise Agreement or License Agreement shall be surrendered and shall be of no further force and effect, to the extent of the overlap. A Franchise Agreement or License Agreement shall be entered into which covers the franchise or license area being sold or transferred, along with said overlap area.

(C) The County shall not consent to the sale or transfer of a cable system until the cable operators have paid all fees, damages, and/or penalties due to the County, and all lawful claims which the County may have against the cable operators have been resolved.

(D) No sale or transfer of a cable system shall be effective until the purchaser or transferee of said cable system has become a signatory to the Franchise Agreement or License Agreement and has provided the insurance, indemnity and surety as required in this Ordinance. In accepting the sale or transfer, the purchaser or transferee shall assume all liabilities of the seller or transferor under the Franchise Agreement or License Agreement and shall assume all obligations of same to its subscribers and the County, unless specifically waived by the Board of County Commissioners.

**SECTION 20: COUNTY'S RIGHT TO PURCHASE, CONSTRUCT, INSTALL,
OPERATE AND/OR MAINTAIN A CABLE SYSTEM**

(A) The County reserves the right to purchase the cable system of a cable operator in accordance with federal law; and

(B) the County also reserves the right to own, construct, install, operate, and/or maintain its own cable system in accordance with applicable federal, state, and local laws, rules and regulations.

SECTION 21: INDEMNIFICATION

To the extent permitted by law, the cable operator agrees to indemnify, defend and save harmless the County, its officers, employees, agents and representatives from and against any and all damages, losses, expenses and claims, including reasonable attorney's fees and costs of suit or defense arising out of, resulting from or alleged to arise out of, the negligent, careless or wrongful acts, omissions, failures to act, or misconduct of the cable operator or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, installation, operation, maintenance, or removal of its cable system, and in the provision or offer of cable services within the jurisdiction of the County.

SECTION 22: INSURANCE

(A) Upon execution of the Franchise Agreement or License Agreement, each cable operator shall provide to the County proof of the liability insurance policies as set forth in this Section. In no event shall the cable operator or a contractor or subcontractor thereof commence

1 work without securing the required insurance coverages. All required policies of insurance shall
2 be issued by companies authorized to do business under the laws of the State of Florida. The
3 cable operator shall secure and maintain the following liability insurance policies:

4 (1) Comprehensive general liability insurance with limits not less than Three
5 Million Dollars (\$3,000,000.00) combined single limit, covering:

6 (a) Personal or bodily injury or death
7 (b) Property damage
8 (c) Comprehensive premises/operations, explosions and collapse
9 hazard, underground hazard, and products completed hazard.

10 (d) Contractual liability of the cable operator under the Franchise
11 Agreement or License Agreement.

12 (2) Comprehensive automobile liability insurance with a limit of Three
13 Million Dollars (\$3,000,000.00) combined single limit, covering owned, leased, hired and non-
14 owned vehicles.

15 (3) Broadcasters errors and omissions insurance (or similar form) with a limit of
16 One Million Dollars (\$1,000,000.00), covering infringement of copyrights. At the sole discretion
17 of the Cable System Coordinator, a new operator unable to secure Broadcasters errors and omissions
18 insurance may file proof of FCC mandatory copyright filings in lieu of same. Acceptance of FCC
19 filings by the Cable System Coordinator shall not waive the requirement of the cable operator to
20 obtain such insurance and same shall be submitted to the Cable System Coordinator upon request.

21 (4) Workers' compensation insurance within the statutory limits as set forth in the
22 then current Florida Statutes, and employer's liability insurance with limits of not less than Five
23 Hundred Thousand Dollars (\$500,000.00).

24 (B) All insurance policies, except workers' compensation, which are secured and
25 maintained in accordance with this Section shall contain the following conditions by endorsement:

26 (1) The county shall be named as an additional insured.

27 (2) A statement that the County shall be given thirty (30) days prior notice of any
28 cancellation or material change in the insurance policy.

29 (3) Insurers shall have no right of subrogation or recovery against the County, it
30 being the intention that the insurance policies shall protect the cable operator and the County and
31 shall be primary coverage for all losses covered by the policies.

(4) The policy clause "other insurance" shall not apply to the County where the County is designated as additional insured on the policy.

(5) Companies issuing the insurance policies shall have no recourse against the County for payment of any premiums or assessments; such shall be the sole responsibility of the cable operator.

(C) The liability insurance policies required in this Section shall be maintained by the cable operator, without interruption, throughout the term of the Franchise Agreement or License Agreement and any renewal thereof.

SECTION 23: SECURITY

(A) Construction Bond

Prior to commencing construction of a cable system, the cable operator shall provide the County with a bond written by a surety acceptable to the County equal to at least one-hundred percent (100%) of the estimated cost of constructing the cable system within the franchise or license area. The construction bond shall remain in full force and effect until sixty (60) days after substantial completion of the work, as determined by the Cable System Coordinator, including restoration of County rights-of-way and other property affected by the construction. Said construction bond shall guarantee, to the satisfaction of the County:

- (1) timely completion of construction;
- (2) construction in compliance with applicable plans, permits, technical codes and standards;
- (3) proper location of the cable system facilities as specified by the County;
- (4) restoration of the County rights-of-way and other property affected by the construction;
- (5) the submission of "as-built" drawings after completion of construction; and
- (6) timely payment and satisfaction of all claims, demands or liens for labor, materials or services provided in connection with the construction of the cable system.

(B) Performance Security

(1) Upon execution of the Franchise Agreement, the cable operator shall provide the Cable System Coordinator with a bond for performance security in the minimum amount of Two Dollars and Fifty Cents (\$2.50) per subscriber, but not less than twenty-five thousand dollars (\$25,000.00). The amount calculated on a per-subscriber basis shall be rounded up to the nearest

1 One Thousand Dollars (\$1,000.00) and shall be updated monthly by the cable operator to reflect
2 changes in the number of subscribers. The performance security shall be used to ensure the full and
3 faithful performance by the cable operator of all provisions of this Ordinance and the Franchise
4 Agreement; compliance with all orders, permits and directions of any County agency, commission,
5 board, department, or division having jurisdiction over the acts or defaults of the cable operator
6 under this Ordinance; and the payment by the cable operator of any damages, liquidated damages,
7 fees, claims, liens or penalties due the County by reason of any act or omission from or related to the
8 construction, installation, operation, or maintenance of the cable system or provision of cable
9 services by the cable operator. The cable operator shall ensure that the bond for performance
10 security remains in full force and effect during the entire term of the Franchise Agreement and any
11 renewal thereof, and for one (1) year after said Franchise Agreement or any renewal thereof expires
12 or is terminated.

13 (2) The performance security shall contain the following endorsement:

14 "It is hereby understood and agreed that this performance bond may not be canceled
15 by the surety or institution nor the intention not to renew be exercised by the surety or institution
16 until thirty (30) days after receipt by the County, by registered mail, a written notice of such intention
17 to cancel or not to renew. The County is an intended third party beneficiary of this provision."

18 **SECTION 24: RULES AND REGULATIONS**

19 (A) This Ordinance shall be read and applied so that it is consistent with the Act, as
20 amended, to the extent the County is required to comply therewith.

21 (B) All cable operators shall comply with the provisions as set forth in the Act, as
22 amended, and all rules, and regulations, applicable thereto. The County shall have all powers not oth-
23 erwise preempted by federal or state law, and shall have all powers conferred on a franchising or
24 licensing authority or allowed pursuant to the Act, as amended, which are not addressed in this
25 Ordinance. Should any material amendment be made to the Act or should any provision thereof be
26 held invalid or unenforceable by a court of competent jurisdiction which materially affects the
27 County's authority with respect to the regulation of the cable operator or any provision of this
28 Ordinance, the Board of County Commissioners shall have the right to amend this Ordinance to the

1 extent it deems appropriate, and the then-existing franchises and licenses shall be subject to such
2 amendment.

3 (C) The cable operator shall comply with all applicable state and local laws, and shall
4 comply with this Ordinance, as may be amended from time to time, and all resolutions, agreements,
5 policies and procedures pertaining to the provision of cable services within the County's franchising
6 jurisdiction. The cable operator shall not be excused from said compliance by any failure of the
7 County to insist upon or to seek compliance with any such provision, term, or condition.

8 (D) The County reserves the right to create, establish or appoint such boards and persons
9 as deemed necessary to assist in administering the provisions of this Ordinance and to establish a
10 procedure for the creation, establishment, appointment or operation of such boards and persons.

11 (E) The County reserves the right to adopt a resolution to establish fines for violations
12 by a franchisee or a licensee of a permit issued to said franchisee or licensee in accordance with
13 Section 13 hereinabove.

14 **SECTION 25: ENFORCEMENT**

15 The Cable System Coordinator shall ensure enforcement of this Ordinance and the applicable
16 Franchise Agreement, License Agreement, permit, resolution, policy and procedure as incorporated
17 and specifically set forth herein; and shall coordinate any enforcement action with other
18 governmental entities where appropriate.

19 (A) Should a cable operator violate any material provision of this Ordinance, the
20 Franchise Agreement, License Agreement, permit, resolution, policy or procedure, the County may
21 commence an action for appropriate legal and/or equitable relief in a court of competent jurisdiction
22 in Palm Beach County. It is the purpose of this Ordinance to provide additional cumulative
23 remedies.

24 (B) Whenever a cable operator has violated or continues to violate any provision of this
25 Ordinance or of the applicable Franchise Agreement, License Agreement, permit, resolution, policy
26 or procedure, the County may petition a court of competent jurisdiction to issue a temporary or
27 permanent injunction or both, as may be appropriate, which restrains or compels specific
28 performance by the cable operator of the provision, permit, resolution, policy or procedure. Such
29 other actions which are appropriate for legal and/or equitable relief may also be sought by the

1 County. A petition for injunctive relief need not be filed as a prerequisite to taking any other action
2 against a cable operator by the County.

3 (C) Failure to comply with the material provisions as set forth in this Ordinance shall
4 constitute a violation of a County Ordinance pursuant to Section 125.69(1), Florida Statutes, by a
5 fine not to exceed Five Hundred Dollars (\$500.00) per violation per day for as long as the violation
6 continues. The provisions of this Ordinance may also be enforced in accordance with Chapter 162,
7 Florida Statutes, or any other means lawfully available for the enforcement of its provisions.

8 (D) The County may recover all expenses associated with enforcement activities,
9 including inspection, and the cost of any actual damages incurred by the County. Further, the County
10 may recover reasonable attorney's fees and court costs and shall petition the court to impose, assess,
11 and recover such sums. Filing a suit for civil penalties shall not be a prerequisite for the County
12 taking any other action against the Cable Operator.

13 **SECTION 26: REVOCATION OR TERMINATION OF FRANCHISE AGREEMENT**
14 **OR LICENSE AGREEMENT**

15 (A) In addition to all other rights of the County under this Ordinance, the County may
16 revoke or terminate a Franchise Agreement or License Agreement of a cable operator:

17 (1) Constructs, installs, operates, or maintains a cable system within an
18 unauthorized location;

19 (2) Causes a sale or transfer of the cable system without the prior consent of the
20 County;

21 (3) Abandons the cable system;

22 (4) Fails to relocate or remove cable system facilities as required in this
23 Ordinance;

24 (5) Fails to pay fees when and as due the County;

25 (6) Declares insolvency or bankruptcy; and/or

26 (7) Violates a material term or provision of this Ordinance, or a Franchise
27 Agreement, License Agreement, permit, rule, policy or procedure .

28 (B) The Cable System Coordinator shall provide the cable operator thirty (30) days
29 written notice by certified mail an opportunity to fully cure the defect in performance, challenge the

existence of the defect, or show that the defect in performance should be excused either temporarily or permanently. The County shall, at any time after the close of the thirty (30) day period, request that the matter be considered by the Board of County Commissioners and provide an opportunity for the cable operator to be heard. The Board of County Commissioners shall determine whether to revoke or terminate the Franchise Agreement or License Agreement of the cable operator, or to establish a lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors:

- (1) whether substantial harm resulted;
- (2) whether the violation was intentional;
- (3) whether there is a history of prior violation(s) by the cable operator; and
- (4) whether there is a history of overall compliance.

The decision of the Board of County Commissioners shall constitute final County action and the cable operator may appeal said decision to a court of competent jurisdiction.

SECTION 27: SAVINGS CLAUSE

Any existing Franchise Agreement executed by the Board of County Commissioners prior to the effective date of this Ordinance shall remain in full force and effect except that it shall be subject to the provisions of this Ordinance. The term of any such existing Franchise Agreement shall continue in full force and effect until the expiration of its initial term or renewal, whichever occurs first.

**SECTION 28: REPEAL OF COUNTY ORDINANCES: REPEAL OF LAWS IN
CONFLICT**

Palm Beach County Ordinances Nos. 86-35, 88-36, 91-42 and 92-4 are hereby repealed in their entirety. All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 29: SEVERABILITY

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

SECTION 30: INCLUSION IN THE CODE OF LAWS AND ORDINANCES

The provisions of this Ordinance shall become and be made a part of the Code of Laws and
Ordinances of Palm Beach County, Florida. The articles and sections of this Ordinance may be
renumbered or relettered to accomplish such, and the word "Ordinance" may be changed to
"Section", "Article", or other appropriate word.

SECTION 31: EFFECTIVE DATE

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, on the 16th day of September, 1997.

ATTEST:

ATTEST: PALM BEACH COUNTY, FLORIDA, BY ITS
DOROTHY H. WILKEN, CLERK BOARD OF COUNTY COMMISSIONERS

By: Deputy Clerk



Chairman

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: John Doe
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 24th day of September, 1997.